IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF IDAHO

IN RE	)	
	)	
LAKE CITY R.V., INC.,	)	**Case No. 95-03264-7**
	)	
	)	
Debtor.	)	
	)	**MEMORANDUM OF**
DECISION		
_____	)	**AND ORDER GRANTING**
	)	**SUMMARY JUDGMENT**
FORD ELSAESSER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Adversary No. 97-6316**
	)	
JOHN and JACQUELYN GALE, and CHERI SADLER,	)	
	)	
Defendants.	)	
	)	
_____	)	

HONORABLE TERRY L. MYERS, U.S. BANKRUPTCY JUDGE

H. James Magnuson, Coeur d'Alene, Idaho, for Plaintiff.

Malcolm S. Dymkoski, Coeur d'Alene, Idaho, for Defendants.

The Plaintiff is the chapter 7 Trustee for Lake City R.V., Inc. ("Lake City"), Case No. 95-03264. He brought suit against John and Jacquelyn Gale, and Cheri Sadler ("the Gales"), alleging preferences under § 547(b) of the Code.[1] The Trustee moves for summary judgment. Fed.R.Bankr.P. 7056, Fed.R.Civ.P. 56. Affidavits and documentation have been submitted both in support of and in opposition to the Motion for Summary Judgment, and oral argument has been presented. The Court took the matter under advisement to review the record and applicable authorities.

This decision constitutes its ruling upon the motion. Pursuant to Rule 52(a) no findings of fact or conclusions of law are necessary in disposing of a motion for summary judgment, but, to the extent the same are implicated, this decision shall constitute such findings and conclusions.

BACKGROUND

Lake City operated a recreational vehicle dealership before filing bankruptcy. It filed a petition for relief under chapter 7 on October 23, 1995, thus defining the 90-day preference period as June 25, 1995 to October 23, 1995.

In June 1995, Lake City entered into a transaction with the Gales documented initially by a promissory note in the face amount of $50,000.00 dated June 28, 1995. An additional sum of $50,000.00 was transferred by the Gales to Lake City and a note in the amount of $100,000.00 payable to Gales by Lake City was executed on September 19, 1995. The money was deposited in a checking account at Idaho Independent Bank entitled "Lake City R.V., Inc., Dealer Savings Account."

According to the promissory notes, the money deposited in the Dealer Savings Account would accrue interest at one rate when it was simply held in the account, but at a higher rate when it was used to finance used vehicle inventory.[2]

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[1] Unless otherwise indicated, all references to "code," "title," "chapter," and "section" are to the Bankruptcy Code, 11 U.S.C. §§ 101 - 1330, and all references to "rule" are to the Federal Rules of Bankruptcy Procedure ("Fed.R.Bankr.P.") 1001 - 9036, unless otherwise noted.

[2] The second promissory note obligated Lake City to pay

Lake City used the money from the Dealer Savings Account to "buy" used vehicles traded-in on other vehicles purchased by its customers. Several of these transactions occurred using the money in the Dealer Savings Account.

As required by the promissory notes, on August 7, August 10 and October 5, 1995, Lake City made interest payments to the Gales by checks drawn on Lake City's general banking account aggregating $2,159.57. Each of these checks was delivered to the Gales along with a document stating "Promissory Note -- interest due" for some period and represented interest obligations accruing from Lake City's use of the funds in the Dealer Savings Account as per the terms and conditions of the promissory notes.

The promissory notes also provided that certain conditions must be met in order for Lake City to use the money in the Dealer Savings Account. The money could only be drawn out of the account by Doug or Richard Foster, employees of Lake City. No more than 70% of the N.A.D.A. wholesale value of the vehicle being acquired could be drawn. Lake City had to submit to the Gales the certificate of title for the vehicle, a wholesale appraisal form and a copy of the check drawn on the Dealer Savings Account. In practice, when the vehicle was later sold by Lake City, the money advanced from the Dealer Savings Account was returned to the account. No provision was made for repayment to the Gales of the money deposited in the Dealer Savings Account except for return of all funds upon default, however the second promissory note limited the term of the arrangement to one year.

> monthly interest at the fixed rate of Twelve percent (12%) per annum on the total amount borrowed of One Hundred Thousand and NO/100 Dollars ($100,000.00).
>
> On any outstanding amount(s) that have been advanced towards the flooring of used R.V.'s, [Lake City] promises to pay [the Gales] monthly interest at the fixed rate of Fourteen percent (14%) per annum, while the balance (unused portion) of the $50,000.00 not advanced toward the flooring of used R.V.'s will continue to bear interest at the rate of Twelve percent (12%), as stated above.

The first promissory note had the same provision except the total amount borrowed was only $50,000.00.

The Gales discovered that Lake City sold vehicles from its inventory of which the Gales possessed certificates of title. Lake City had not requested release of the certificates of titles, had not reimbursed the Dealer Savings Account for the amount advanced to floor the inventory, nor informed the Gales of the sales. The Gales therefore demanded that the entire balance of the Dealer Savings Account be paid to them. On October 10, 1995, Lake City made a check payable to Gales drawn on the Dealers Savings Account in the amount of $24,213.09.

Additionally, on or about October 10, the Gales removed various vehicles financed through the Dealer Savings Account from Lake City's sales lot. The Gales later sold the vehicles for $79,062.50.

The Trustee asserts that the interest payments of $2,159.57, the turnover of the balance of the Dealer Savings Account in the amount of $24,213.09, and the seizure of the vehicles worth $79,062.50 are preferential transfers subject to avoidance. He moves for summary judgment.

The Gales raise several issues on two of the requisite elements of preference as discussed below.

APPLICABLE LAW

Summary Judgment

Summary judgment may be granted if when the evidence is viewed in the light most favorable to the non-moving party there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Margolis v. Ryan, 140 F.2d 850, 852 (9th Cir. 1998). The Court does not weigh the evidence; rather it determines only whether a material factual dispute remains for trial. Covey v. Hollydale Mobile Home Estates, 116 F.3d 830, 834 (9th Cir. 1997).

The initial burden of showing that there is no genuine issue of fact rests upon the moving party. Margolis, supra. The non-moving party cannot merely rest upon its pleadings but must establish specific facts showing that there is a genuine issue for trial. Rule 56(e).

The Preference Cause of Action

Section 547 (b) provides:

"[T]he trustee may avoid any transfer of an interest of the debtor in property --

(1) to or for the benefit of a creditor;
(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
(3) made while the debtor was insolvent;
(4) made --
(A) on or within 90 days before the date of the filing of the petition;
or
(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
(5) that enables such creditor to receive more than such creditor would receive if --
(A) the case were a case under chapter 7 of this title;
(B) the transfer had not been made; and
(C) such creditor received payment of such debt to the extent provided by the provisions of this title.

The transfer must be of the debtor's interest in property. § 547(b), (e). The debtor is presumed to be insolvent for the 90 days preceding the filing of the petition. § 547(f). Pursuant to § 547(g), it is the trustee's burden to establish all of the elements necessary for entitlement to relief.

DISCUSSION

From the Court's review of the record and the contentions of the parties, no dispute is raised as to several elements. First, the transfers were to or to the benefit of the Gales. Second, Lake City was insolvent at the time the transfers were made. Third, the transfers all took place within 90 days of the Lake City's October 23, 1995 bankruptcy filing. Fourth, if the transfers are allowed to stand, the Gales would receive more than they would otherwise receive in Lake City's chapter 7 proceeding upon distribution by the Trustee.

The disputed elements are whether or not the transfers were for or on account of an antecedent debt owed by Lake City to the Gales, and whether the

property transferred was the Lake City's property or property in which Lake City had an interest.

Antecedent Debt

Debt is defined in § 101(12) as "liability on a claim." Claim is defined as a right to payment under § 101(5)(A). Antecedent describes the temporal relationship between creation of the debt and the transfer of the debtor's interest in property. If the debt was created before the transfer occurred, the debt is antecedent. *See, e.g., Fitzgerald v. Blackman (In re Blackman)*, 92 I.B.C.R. 209, 211 (Bankr.D. Idaho 1992) ("It is the transfer of the interest in the Debtor's property . . . in relation to the creation of the debt . . . that is the focus of the preference claim.").

The promissory notes characterized the transaction between Lake City and the Gales as a credit line for used vehicle wholesale flooring. The promissory notes reflect that the "borrower" was Lake City and that the Gales were the "lender." The total amount of money loaned to Lake City was $100,000.00, which was deposited in the Dealer Savings Account. Lake City was obligated to pay the Gales' monthly interest on the entire amount in the Dealer Savings Account regardless of use and an incrementally higher rate of interest on all advances from that account.

On their face, the promissory notes reflect a lending relationship whereby the lender expects to benefit from the borrower's use of its money. The loan of $100,000.00 to Lake City created a prebankruptcy indebtedness in the same amount to the Gales, thus an antecedent debt.

The payment made to the Gales of the balance of the Dealer Savings Account was made to partially pay off this indebtedness. Likewise, the Gales seized the vehicles to satisfy the amounts owing them on the loan. Interest payments on this loaned amount are payments on account of the antecedent debt.

A similar lending relationship involving Lake City was addressed by Judge Alfred C. Hagan in his January 31, 1997 opinion entered in the adversary

proceeding *Erickson v. Foster*, Adversary No. 96-6057, 96-6058.[3] In *Erickson*, the plaintiff "loaned" money to Lake City for the purchase of vehicles to be held for resale in an inventory financing context. The money was transferred to Lake City in the form of an "advance" in order that Lake City could purchase the units from its customers. Lake City would purchase the used vehicles and received 70% of wholesale book value of those vehicles from the Ericksons and deliver unendorsed titles to the Ericksons to be held apparently in the nature of security. Upon the sale of the used vehicles by Lake City, the proceeds were delivered into the general business account of Lake City and a check was drawn upon that account to Erickson for repayment of their "advances." The title documents were then returned to Lake City by Erickson who would process them. Judge Hagan concluded there that a lending relationship was created.

The Gales attempt to distinguish *Erickson* primarily on the basis of their use of the Dealers Savings Account as opposed to Lake City's general business account. The Gales argue that this reflects their intention, unlike Erickson's, not to make a loan to Lake City[4] but to establish a fund in which Lake City allegedly had no interest absent strict compliance with the terms of the promissory notes.

But they ignore the fact that Lake City had clear and apparent authority to use the funds in the account. Lake City's employees were the only signatories on the Dealer Savings Account. The use of the funds in the Dealer Savings Account was unfettered, except for any liability for breach of contract engendered by such use. Additionally, there was no express trust[5] created by the promissory notes,

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[3] These adversary cases were consolidated and related to questions of nondischargeable obligations owed by the principals of Lake City in their individual bankruptcy proceedings.

[4] Both the Erickson and Gale financing arrangements were designed to satisfy a relatively commonplace financing need - inventory flooring. Such financing can be in the form of a line of credit, a direct loan of funds, or in several other permutations. The similarities between the Erickson and Gale structures outweigh the dissimilarities. That the exact structures used vary in some degree doesn't change the fundamental function or nature in both cases - flooring of inventory through a lending relationship.

[5] The Gales have not contended, and the record would not support, that an express trust was created. Rather, the Gales analogize the Dealer Savings Account to an attorney's trust account. The attorney's obligation to maintain

nor did the Dealer Savings Account evidence any trust.[6] The Dealer Savings Account was, more accurately, a segregated account rather than a trust account. Upon review of all submissions, the Court rejects the Gales' attempts to distinguish *Erickson*.

The Gales next argue that the Court should consider parol evidence to explain the "true meaning" of the promissory notes which otherwise reflect the Gales were lenders to Lake City. Where the terms of the contract are plain and unambiguous, extrinsic evidence is inadmissable to vary or contradict the terms. *Hall v. Hall*, 777 P.2d 255, 256 (Idaho 1986). The promissory notes are not ambiguous with regard to the nature of the relationship. The Court will not consider parol evidence to supplement the promissory notes.

The Court concludes that the Gales and Lake City were engaged in a lending relationship. Thus, transfers made to the Gales were for or on account of antecedent debt owed by Lake City before the transfers were made. § 547(b)(2).

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funds in a trust account is imposed by Idaho Rule of Professional Conduct 1.15. This rule does not impose a similar obligation on Lake City, nor is there an analogous Idaho statute, regulation or rule imposing such obligation on Lake City.

[6] The Gales would not succeed in asserting that the Dealer Savings Account should be cast as a resulting or constructive trust in their favor. The Bankruptcy Court is loathe to impose such remedies, except, for example where there is clear proof of a failed express trust, because doing so effectively circumvents the policy favoring ratable distribution to all creditors. *Taylor Associates v. Diamant (In re Advent Management Corp.)*, 178 B.R. 480, 489 (9th Cir. BAP 1995); *Cardiovascular & Chest Surgical Assocs. v. Fitzgerald (In re Norris)*, 96.4 I.B.C.R. 149, 152 (Bankr.D. Idaho 1996); *see also*, *Reid v. Keator*, 39 P.2d 926, 931 (Idaho 1934); *Estate of Hull v. Williams*, 885 P.2d 1153, 1161 (Idaho Ct.App. 1994); *Chinchurreta v. Evergreen Management, Inc.*, 790 P.2d 372, 374 (Idaho Ct.App. 1989).

Lake City's Property

There were three transfers of property: first, the interest payments from Lake City's general business account; second, the turnover of the balance in the Dealer Savings Account; and third, the repossession of the vehicles.

There has been no argument that the interest payments made from the general business account were not made from Lake City's property. The Gales have focused their arguments on the second and third transfers.

Generally, state law defines the extent of property rights and security interests in the debtor's property. *Butner v. United States*, 440 U.S. 48, 55 (1979). Money in a bank account under the debtor's control presumptively constitutes property of the debtor's estate because money could be used to pay (or be seized by) any creditor of the debtor. *Danning v. Bozek (In re Bullion Reserve of North America)*, 836 F.2d 1214, 1217 (9th Cir. 1988).

Here, the Gales could not draw against the Dealer Savings Account. Only Lake City, through its employee Doug Foster, could control the funds deposited in that account. The promissory notes defined the way in which money should be drawn from the account, as between Lake City and the Gales, but that would not have prevented Lake City from paying any creditor with those funds. Lake City was the only party with an interest of record in the Dealer Savings Account. The fact that funds in this account were not commingled with other funds does not vary the result. The funds in the Dealer Savings Account were Lake City's property.

The Court finds that the vehicles were also Lake City's property. Lake City acquired the vehicles, and, at the time the vehicles were taken as trade-ins, the previous owners released their interests in the vehicles. Lake City then held those vehicles in its own possession on its sales lot and offered them for sale to the public.

The Gales argue that under Idaho Code § 49-503 no person can acquire an interest in a vehicle until he has issued to him a certificate of title reflecting his interest.[7] However, if the Gales are correct, not only did Lake City lack an

[7] The Gales have not addressed how dealers hold and sell vehicles inventory without the issuance of new certificates of title reflecting the dealer's interest in

interest in the used vehicles, but so did the Gales who never had certificates of title issued in their name either.

Rather, the process by which the Gales would obtain possession of the certificates was designed to protect their interests and, perhaps, secure repayment of the loan.[8] This approach to handling the certificates of title evinces that Lake City owned the vehicles and had the right to sell them, but was supposed to advise the Gales to obtain the certificates of title needed to close the sale.[9] Possession of the certificates of title by the Gales functioned as a device to secure Lake City's performance under the promissory notes.

CONCLUSION AND ORDER

There is no factual dispute in this case, only disputes regarding the legal significance of the facts. Consequently, it is a case properly susceptible of determination by summary judgment.

The Court concludes that transfers of $105,435.16[10] of Lake City's property were made to the Gales for or on account of Lake City's antecedent debt owed to the Gales. The transfers were made within 90 days of Lake City's filing of its petition for relief under chapter 7 and enabled the Gales to receive more than they would have without such transfers under a chapter 7 liquidation.

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the inventory.

[8] This arrangement only secured repayment of the principal upon default under the promissory notes. When not in default, obtaining possession of the certificates of titles functioned to inform the Gales of advances from the Dealer Savings Account and requests to release possession informed the Gales of sale of inventory.

[9] Two sales of vehicles occurred without turnover of the certificates of title or notice to the Gales. Eventually, the Gales surrendered the certificates of title to the purchasers.

[10] Lake City transferred interest payments of $2,159.57, the $24,213.09 balance of the Dealer Savings Account, and vehicles worth $79,062.50 to the Gales.

The Court GRANTS the Trustee's motion for summary judgment. The Trustee shall submit an appropriate form of judgment.

Dated this 17th day of March, 1999.